MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

Law Court Docket No. KEN-14-189

Michael J

v.

State of Maine

On Appeal from the Superior Court (Augusta)

BRIEF OF APPELLANT

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Procedural History

Mr. J was found not criminally responsible by reason of mental disease or defect of the offense of Assault on an officer by a Knox County Jury on June 27, 2006 and committed into the custody of the Commissioner of the Department of Heath and Human Services (HHS) on that day. He was kept in the custody of HHS until the hearing on April 10, 2014 when HHS asked the Court to discharge him from HHS custody, except he served time in the Kennebec County Correctional Facility and the Maine State Prison in part of 2009 and part of 2010 for an assault conviction.

Mr. J filed a petition to modify his treatment plan on February 8, 2008 and it was denied on July 15, 2009. On May 25, 2011 another petition was filed and was heard on November 3, 2011 and the Court ordered a modification of his treatment plan from the bench and signed an Order on November 4, 2011 and permitted Mr. J supervised absences from the hospital. (see Appendix page 43) On July 26, 2012, Mr. J filed a petition and another modification of treatment plan was granted on February 14, 2013. On September 5, 2013 the hospital filed a petition asking for Mr. J discharges from the custody of HHS and the hearing was held on April 10, 2014. The Court's decision lead to this appeal.

Statement of Facts

Mr. J was held at the Maine State Prison (MSP) for Robbery. While at the MSP, Mr. J was found not criminally responsible by reason of mental disease or defect of the offense of Assault on a corrections officer by a Knox County Jury on June 27, 2006 and was committed into the custody of the Commissioner of the Department of Heath and Human Services (HHS) on that day. This interrupted his MSP sentence and tolled it. He was kept in the custody of HHS, until the hearing on April 10, 2014 when HHS asked the Court to discharge him from HHS custody. During the time of his commitment, he petitioned for permission to leave the hospital and the Court granted some supervised absences.

During his time at Riverview he participated in treatment and was continually deemed to have a mental disease or defect sufficient to keep him in the custody of the HHS. He periodically behaved in a dangerous manner. Eventually, Riverview did not want him at the hospital anymore because he was too disruptive and because he could be discharged to MSP and therefore was not a threat to the community. The hospital filed a petition to discharge him.

Statement of Issue

The court erred in not following the rule established by LaDew v. Com'r of Mental Health, 532 A.2d 1051(Me. 1987) and In Re: Beauchene 2008 ME 110 that the petitioner must show a substantial change in the mental disease or defect that formed the basis for the finding of not criminally responsible.

Summary of Argument

The court erred in not following the rule established by LaDew v. Com'r of Mental Health, 532 A.2d 1051(Me. 1987) and In Re: Beauchene 2008 ME 110 that the petitioner must show a substantial change in the mental disease or defect that formed the basis for the finding of not criminally responsible because the State did not show that there had been a substantial change in Mr. J's mental condition. In fact, the evidence showed that his condition was the same.

Standard of Review

"We review the District Court's findings of fact to determine whether they are clearly erroneous, and we review de novo the conclusions of law for clear error. In Re Scott S. et.al. 2001 ME 114 ¶ 10. "Our standard of review when the burden of proof is clear and convincing evidence is whether the fact-finder "could reasonably have been persuaded that the required findings were proved to be highly probable." In Re Serena C., 650 A.2d 1343, 1344 (Me. 1994).

Argument

The court erred in not following the rule established by LaDew v. Com'r of Mental Health, 532 A.2d 1051(Me. 1987) and In Re: Beauchene 2008 ME 110 that the petitioner must show a substantial change in the mental disease or defect that formed the basis for the finding of not criminally responsible.

This is the exact same situation as you have in Beauchene:

"All of these examiners agreed that Beauchene does not have and never has had an Axis I disorder, which is a category consisting of major mental illnesses. They agreed that he now has, and always had, a personality disorder, which is an Axis II disorder. They testified that Beauchene mental condition had not changed from the time he committed murder in 1969 through his release hearing in 2006. The only change had been in the labels the psychiatric profession applied to Beauchene's mental condition. The witnesses testified to that Beauchene's disorder would not generally be considered a mental disease or defect under current Maine law." In Re: Beauchene 2008 ME 110 at ¶3.

"Mr. J was admitted to Riverview Psychiatric Center (RPC) from 10/02/06 to 10/06/06 for the purpose of evaluation following his being found Not Criminally Responsible for assaults on the Maine State Prison staff members. On admission he was noted to be calm, cooperative, showing no signs of psychosis, and expressing no suicidal or homicidal ideation." Robert A. Riley, Psy.D. ABPP-CN dated April 15, 2009. (Appendix at page 52).

"From 7/26/07 until 7/7/08 Mr. J was readmitted to RPC for treatment. On admission, the attending psychiatrist stated that he did not meet criteria for involuntary emergency hospitalization, as he is not presently psychotic for expressing suicidal or homicidal ideation. Admission diagnoses were essentially unchanged from the discharge diagnosis from the prior admission in 2006." Robert A. Riley, Psy.D. ABPP-CN dated April 15, 2009. (Appendix at page 52)

Dr. Robert Riley, in his April 15, 2009 report stated "his behavior and mental status are essentially unchanged since the time of that finding".

(Appendix at page 56) and that "it does appear that his extremely high likelihood of serious harm to himself and to others will continue to be present for many years." (Appendix at page 56)

According to the Forensic Report (Appendix at page 25) his annual report for 2010 stated he did not experience significant improvement in the early months of 2010. The annual report for 2011 stated that after returning to Riverview from MSP he began returning to his old habits but that his treatment with Clozaril was very successful. (Appendix page 25) His annual report for 2012 indicated that the Clozaril had to be decreased. During 2012 he broke a locker door, punched a door and damaged a door by slamming it with enough force to break a lock. (Appendix at page 26)

In the August 24, 2011 Institutional Report, there is no mention of Mr. J's condition changing since the jury finding him not criminally responsible. "Mr. J suffers both problems with mood and behavior as well as his character makeup that have been challenging for the hospital and his treatment team." (Appendix at page 48) There is no mention of psychosis, hallucination or his behaviors being the result of mental disease or defect.

There was not any evidence presented to demonstrate that Mr. J had a certain mental disease or defect when the jury found him not criminally responsible and that now he does not have that condition. The evidence showed that his condition at the time of the jury finding until now had not changed. Certainly there was not any evidence that it had substantially changed or that he was psychotic at the time of the criminal charges.

If the Court's reasoning in Mr. J case is followed in every case, the Due Process of the jury procedure and the intent of Title 15 MRSA § 104 can easily be undermined. A jury could find someone not criminally responsible and they could be sent to Riverview, found to not have a mental disease or defect and a petition for discharge could be filed and the person could be discharged a few months later after getting a hearing in Court. Imagine if Mr. J. could not be sent back to MSP and had to be released into the community? The hospital never would have petitioned the court for his release. The hospital and local group homes are filled with people, whose actions resulted in a homicide, whose symptoms are controlled with medication, and who have dangerous behaviors that are no longer affected by psychotic thinking but the hospital does not want to petition for discharge because their personality disorders influence those dangerous behaviors. For them, the only way they can be discharged is after a long period of success with taking their medications and not acting dangerous.

The Beauchene case is the same situation as Micahel J. In the Beauchene case, "The Superior Court wrote that Beauchene 'did not nor does ... have a mental disease or defect'. The court also, however, wrote that ' [i]t is not this court's role to overturn a 37-year-old verdict' that found Beauchene did have a mental disease or defect. We conclude that the courts first statement indicates it's appreciation of Beauchene's argument and its attempt to reconcile it with the evidence that Beauchene continues to pose threat to others. We conclude that the court's second statement clearly establishes its

finding that the threat Beauchene poses is a likely result of the mental disease or defect that the jury found Beauchene to have in 1970. Because the Superior Court found Beauchene did have a mental disease or defect as that term was defined in 1970, the court correctly denied Beauchene petition for discharge." In Re Beauchene, 2008 ME 110 ¶ 11.

The LaDew case is the same situation, as Michael J. LaDew was found not criminally responsible in September of 1985. 15 MRSA §104-A was changed in July of 1986. His petition came to hearing in January of 1987 and was denied. The Law Court affirmed the decision but made it clear that LaDew had to prove that he no longer suffered from the mental disease or defect that caused the finding of not criminally responsible and determined that he had not.

"The Superior Court applied the amended standard of "mental disease or defect" to LaDew's petition for release. The court reasoned that since the legislature amended the release provisions of title 15 as part of the same bill altering the insanity defense statute, P.L. 1985, ch. 796 (enacting L.D. 2397 (112th Legis. 1986)), the new definition of "mental disease or defect" would apply with equal force to the release provisions in any release proceeding commenced after July 16, 1986." LaDew v. Com'r of Mental Health, 532 A.2d 1051 at 1052 (Me. 1987) The Law Court explained that this was a mistake. "Rather one would reasonably expect that to be released under 15 M.R.S.A. § 104-A a BRI acquittee must show (clearly and convincingly) that the mental disease or defect by reason of which he was relieved of criminal responsibility

no longer exists, or at least no longer poses a danger to himself or others if he is released." LaDew at 1053

If it was proper for the court to find that Beauchene had a mental disease or defect and deny the petition for discharge because a jury found him not criminally responsible 37 years before, it is proper for the court to deny the petition for discharge in this case for the same reason. The only difference is the discharge of Beauchene would be into the community and the discharge of Mr. J. is into MSP. This is the same situation as LaDew. He had a personality disorder and was dangerous and continued to have the same mental disease or defect that he had at the time he was found not criminally responsible. The Superior Court found that he did not meet his burden and the Law Court made it clear that a petitioner must prove the absence of the mental disease or defect that lead to the not criminally responsible finding. The only way to do that by clear and convincing evidence is to show exactly what the mental disease or defect was at the time of criminal allegations. That was not done in the case of Michael J. In fact, the evidence points to the fact that he has had the same problem for many years preceding the criminal allegations, during the time of the criminal allegations, since the finding of not criminally responsible and currently. He was found not criminally responsible in June of 2006 for conduct that occurred in May of 2004. There was not any evidence presented that indicated his mental disease or defect was any different in 2004. In fact there was evidenced presented that, while he has learned some peaceful social skills,

the mental process that influenced the behaviors that got him charged have remained the same.

It is the best policy and most reasonable interpretation of the statute to require the petitioner to prove that the mental disease or defect that was influencing the behavior at the time of the criminal allegations is no longer influencing the petitioner. This must be done by clear and convincing evidence. This is the only way to ensure that the community will be safe. As mentioned above, the policy followed in this particular case could lead to dangerous people being discharged into the community. The correct approach is to grant the petitions of Beachene, LaDew and Michael J when it is proven by clear and convincing evidence that they are safe.

CONCLUSION

The Appellant respectfully requests that this Honorable Court vacate the Superior Court's Order or remand for more findings about the mental disease or defect that influenced of Michael J's behavior in 2004.

Dated: September 3, 2014

Harold J. Hainke, Esq.
Attorney for Appellant

CERTIFICATE OF SERVICE

I, Harold J. Hainke certify that I will send two copies of the foregoing Brief of Appellant via U. S. Mail, postage prepaid, on September 4, 2014 to:

David M. Spencer Esq. 95 State St. Augusta ME 04330

Dated: September 3, 2014

Harold J. Hainke, Esq.